

AGREEMENT FOR CONTRACTOR SERVICES

THIS AGREEMENT is made as of the ____ day of _____ in the year 2006, between **THE CITY OF LEESBURG**, a Florida Municipal Corporation, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (hereinafter referred to as the "CITY"), and **TERRY EVANS d/b/a THE PHOTO PLACE**, whose address is 711 North 14th Street, Leesburg, Florida 34748, (hereinafter referred to as the "CONTRACTOR").

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties to this Agreement, and for other good and valuable considerations, the parties agree as follows:

1. **Services.** The CONTRACTOR shall perform the following services: **SEE EXHIBIT "A,"** which is attached and incorporated by reference herein. Nothing herein shall limit the CITY's right to obtain proposals or services from other contractors for similar projects.

2. **Labor and Materials.** All work will be done in a competent and workmanlike manner, using quality, new materials. CONTRACTOR shall guarantee all materials and workmanship furnished under this agreement for a period of one (1) year from completion.

3. **Insurance.** The CONTRACTOR will maintain throughout this Agreement the following insurance: **SEE ATTACHMENT "A."**

A. The original of each such policy of insurance, or a complete duplicate, shall be delivered to CITY by CONTRACTOR prior to starting work, together with evidence that the premiums have been paid.

B. All required insurance shall be provided by insurers acceptable to the CITY with an A.M. Best rating of at least "A."

C. The CONTRACTOR shall require, and shall be responsible for assuring that any and all of its subcontractors secure and maintain such insurance that are required by law to be provided on behalf of their employees and others until the completion of that subcontractors work.

D. The required insurance shall be secured and maintained for not less than the limits required by the CITY, or as required by law, whichever is greater.

E. The required insurance shall not limit the liability of the CONTRACTOR. The CITY does not represent these coverages or amounts to be adequate or sufficient to protect the CONTRACTOR'S interests or liabilities, but are merely required minimums.

F. All liability insurance, except professional liability, shall be written on an occurrence basis.

G. The CONTRACTOR waives its right of recovery against the CITY to the extent permitted by its insurance policies.

H. Insurance required of the CONTRACTOR, or any other insurance of the CONTRACTOR shall be considered primary, and insurance of the CITY, if any, shall be considered excess as applicable to any claims, which arise out of the agreement, contract or lease.

I. Except for workers' compensation and professional liability, the CONTRACTOR'S insurance policies shall be endorsed to name the CITY OF LEESBURG as additional insured to the extent of the agreement, contract or lease.

J. The Certificate(s) of Insurance shall designate the CITY as certificate holder as follows:

**City of Leesburg
Attention: Mike Thornton, Purchasing Manager
P.O. Box 490630
Leesburg, Florida 34749-0630**

K. The Certificate(s) of Insurance shall include a reference to the project and/or purchase order number.

L. The Certificate(s) of Insurance shall indicate that the CITY shall be notified at least thirty (30) days in advance of cancellation.

M. The Certificate(s) of Insurance shall include all deductibles and/or self-insurance retentions for each line of insurance coverage.

N. The CONTRACTOR, at the discretion of the Risk Manager for the CITY, shall provide information regarding the amount of claims payments or reserves chargeable to the aggregate amount of the CONTRACTOR'S liability coverage(s).

4. **Indemnification.** The CONTRACTOR agrees to make payment of all proper charges for labor required in the aforementioned work and CONTRACTOR shall indemnify CITY and hold it harmless from and against any loss or damage, claim or cause of action, and any attorneys' fees and court costs, arising out of: any unpaid bills for labor, services or materials furnished to this project; any failure of performance of CONTRACTOR under this Contract; or the negligence of the CONTRACTOR in the performance of its duties under this Contract, or any act or omission on the part of the CONTRACTOR, his agents, employees, or servants. CONTRACTOR shall defend, indemnify, and save harmless the CITY or any of their officers, agents, or servants and each and every one of them against and from all claims, suits, and costs of every kind and description, including attorney's fees, and from all damages to which the CITY or any of their officers, agents, or servants may be put by reason of injury to the persons or

property of others resulting from the performance of CONTRACTOR'S duties under this Contract, or through the negligence of the CONTRACTOR in the performance of its duties under this Contract, or through any act or omission on the part of the CONTRACTOR, his agents, employees, or servants.

5. Codes, Laws, and Regulations. CONTRACTOR will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Agreement.

6. Permits, Licenses, and Fees. CONTRACTOR will obtain and pay for all permits and licenses required by law that are associated with the CONTRACTOR's performance of the Scope of Services.

7. Access to Records. CONTRACTOR will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. Said records will be available for examination by the CITY during CONTRACTOR's normal business hours. Said records will be maintained for a period of three (3) years after the date of the invoice.

8. Contingent Fees Prohibited. The CONTRACTOR warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the CITY shall have the right to terminate this Agreement without further liability, and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Agreement.

9. Payment. CITY shall compensate CONTRACTOR for their services in the following manner: **SEE EXHIBIT "A"**. No other costs or services shall be billed to the CITY.

10. Ownership of Documents. All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or accumulated by the CONTRACTOR (or by such sub-consultants and specialty consultants) in rendering services hereunder shall be the sole property of the CITY who may have access to the reproducible copies at no additional cost other than printing. Provided, that the CONTRACTOR shall in no way be liable or legally responsible to anyone for the CITY's use of any such materials for another PROJECT, or following termination. All original documents shall be permanently kept on file at the office of the CONTRACTOR.

11. Independent Contractor. The CONTRACTOR is an independent contractor and as such will be responsible for paying his own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this agreement.

12. **Assignment.** Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

13. **No Third Party Beneficiaries.** This Agreement gives no rights or benefits to anyone other than the CONTRACTOR and the CITY.

14. **Jurisdiction.** The laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. In the event of any litigation arising under or construing this Agreement, venue shall lie only in Lake County, Florida.

15. **Term and Termination.** The term of this Agreement shall be for an initial term, up through and including three (3) years. This Agreement may be renewed in writing for an additional two (2) years at the City's option. All or part of this Agreement may be terminated by the CITY for its convenience on fifteen (15) days written notice to the CONTRACTOR. In such event, the CONTRACTOR will be entitled to compensation for services competently performed up to the date of termination.

16. **Nonappropriation.** The Contractor understands and agrees that this Contract is subject to the availability of funds to the City to purchase the specified products/services. As used herein, a "nonappropriation" shall be defined as an occurrence wherein the City, in any fiscal period, does not allocate funds in its budget for the purchase of the specified products/services or other amounts owed pursuant to this Contract, from the source of funding which the City anticipates using to pay its obligations hereunder, and the City has no other funds, from sources other than ad valorem taxes, which it deems to be available to pay its obligations under this Contract. The City may terminate this Contract, with no further liability to the Contractor/Professional, effective the first day of a fiscal period provided that:

- (a) a nonappropriation has occurred; and
- (b) the City has provided the Contractor/Professional with written notice of termination not less than fifteen (15) days before the proposed termination date.

Upon the occurrence of such nonappropriation the City shall not be obligated for payment for any fiscal period for which funds have not been appropriated.

17. **Contact Person.** The primary contact person under this Agreement for the CONTRACTOR shall be Jim Johnson. The primary contact person under this Agreement for the CITY shall be Troy Houtman.

18. **Approval of CONTRACTORS.** The CITY reserves the right to approve the contact person and the persons actually performing the CONTRACTOR services on behalf of CONTRACTOR pursuant to this Agreement. If CITY, in its sole discretion, is dissatisfied with the contact person or the person or persons actually performing the services on behalf of

CONTRACTOR pursuant to this Agreement, CITY may require CONTRACTOR assign a different person or persons be designated to be the contact person or to perform the CONTRACTOR services hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates under each signature.

"CONTRACTOR"

Terry Evans d/b/a The Photo Place

By: Terry Evans, Owner
Terry Evans, Owner

Date: 5/11/06

"CITY"

The City of Leesburg, Florida

By: _____
Mayor / Commissioner

Attest: _____
City Clerk

APPROVED AS TO FORM:

Date: _____

CITY ATTORNEY

EXHIBIT "A"
SCOPE OF SERVICES

- I. Statement of Work.** The CONTRACTOR shall provide the CITY with photography services for the City of Leesburg Recreational Department sports program and events listed below. These activities will include but not be limited to individual sports photography, team sports photography, special events photography and services. Events may include but not be limited to:

- ▶ Baseball
- ▶ Softball
- ▶ Soccer
- ▶ Football
- ▶ Swimming
- ▶ Volleyball
- ▶ Tennis
- ▶ Pets with Santa

- II. Requirements.** The CONTRACTOR shall meet the requirements listed below:

1. Provide an on-site system for photographing city recreational activities.
2. The system must be able to meet the on-site photography needs for all requested activities.
3. A minimum of three (3) photo packages for participants to choose from.
4. An easy-to-understand ordering system.
5. Photos to customers no longer than three (3) weeks after the photo shoot or be available for pickup by customer.
6. Participants with as much information as possible in regard to their photos.
7. Adequate staffing on-site during sessions to troubleshoot during sessions.
8. Adequate staffing to keep the photo sessions on time based on the schedule provided to program participants.
9. A photo session date far enough in advance that such information can be distributed at the time of sign-ups for the recreational activity.
10. If extra city staff participation or assistance is needed the CITY will be notified in advance.
11. The CONTRACTOR will be responsible for any installation and setup of the system on-site.
12. The CONTRACTOR must receive approval from the CITY prior to any price increases on the photography packages offered to program participants.
13. The CONTRACTOR shall provide a comprehensive contacts list to the CITY. The list will contain names of employees and their contract phone numbers. An emergency after hours contact number will also be provided.

III. Costs and Quantities.

A. Costs.

- ▶ There will be no cost to the CITY for the services provided by CONTRACTOR to the program participants.
- ▶ The CITY will receive no compensation from the CONTRACTOR for the right to provide these services.

B. Quantities.

- ▶ The CITY does not guarantee any quantities under this agreement. Quantities are determined by the willingness of the program participants to purchase the produce and services provided by the CONTRACTOR.
- ▶ The CONTRACTOR'S ability to offer reasonably priced, quality products will certainly improve the quantities purchased.

IV. Insurance Requirements. The insurance requirements from the Request for Proposal RFP-06-04, which are located on pages 20-21 of the Request for Proposal package are incorporated herein.

V. Subcontractors. The CITY reserves the right to approve all subcontractors for this agreement. If subcontractors are to be utilized, their names and references must be included within the initial proposal. Responsibility for the performance of the contract remains with the main contractor exclusively. Subcontractors may be added to this contract during the contract period only with PRIOR WRITTEN PERMISSION from the CITY.

ATTACHMENT A

Minimum Requirements

Appendix A
City of Leesburg
Insurance and Indemnity Requirements

A. Scope of Insurance

The CONTRACTOR shall procure and maintain at its own expense, the following minimum insurance coverage, unless otherwise specified in the agreement, contract or lease.

All required insurance shall be provided by insurers acceptable to the CITY with an A.M. Best rating of at least "A."

The CONTRACTOR shall require, and shall be responsible for assuring that any and all of its subcontractors secure and maintain such insurance that are required by law to be provided on behalf of their employees and others until the completion of that subcontractors work.

The required insurance shall be secured and maintained for not less than the limits required by the CITY, or as required by law, whichever is greater.

The required insurance shall not limit the liability of the CONTRACTOR. The CITY does not represent these coverages or amounts to be adequate or sufficient to protect the CONTRACTOR'S interests or liabilities, but are merely required minimums.

The provisions of the required insurance are subject to the approval of the CITY'S Risk Manager, and upon request, the CONTRACTOR shall make available certified copies of the various policies for inspection.

All liability insurance, except professional liability, shall be written on an occurrence basis.

The CONTRACTOR waives its right of recovery against the CITY to the extent permitted by its insurance policies.

Insurance required of the CONTRACTOR, or any other insurance of the CONTRACTOR shall be considered primary, and insurance of the CITY, if any, shall be considered excess as applicable to any claims, which arise out of the agreement, contract or lease.

B. Indemnification

The CONTRACTOR shall defend, indemnify, and save harmless the CITY or any of its officers, agents, or servants and each and every one of them against and from all claims, suits, and costs of every kind and description, including attorney's fees, and from all damages to which the CITY or any of their officers, agents, or servants may be put by reason of injury to the persons or property of others resulting from the

performance of CONTRACTOR'S duties under this agreement, contract or lease, or through the negligence of the CONTRACTOR in the performance of its duties under the agreement, contract or lease, or through any act or omission on the part of the CONTRACTOR, his agent, employees, or servants.

C. Certificate of Insurance

The CONTRACTOR shall provide evidence of required minimum insurance by providing the CITY an ACORD or other Certificate of Insurance in forms acceptable to the Risk Manager for the CITY, before any work under the agreement, contract or lease begins.

Except for workers' compensation and professional liability, the CONTRACTOR'S insurance policies shall be endorsed to name the CITY OF LEESBURG as additional insured to the extent of the agreement, contract or lease.

The Certificate(s) of Insurance shall designate the CITY as certificate holder as follows:

City of Leesburg
Attention: Mike Thornton, Purchasing Manager
P.O. Box 490630
Leesburg, Florida 34749-0630

The Certificate(s) of Insurance shall include a reference to the project and/or purchase order number.

The Certificate(s) of Insurance shall indicate that the CITY shall be notified at least thirty (30) days in advance of cancellation.

The Certificate(s) of Insurance shall include all deductibles and/or self-insurance retentions for each line of insurance coverage.

The CONTRACTOR, at the discretion of the Risk Manager for the CITY, shall provide information regarding the amount of claims payments or reserves chargeable to the aggregate amount of the CONTRACTOR'S liability coverage(s).

D. Comprehensive General Liability

The CONTRACTOR shall purchase and maintain Commercial General Liability coverage on forms no more restrictive than the latest editions of the Commercial General Liability policies of the Insurance Services Office (ISO). The Commercial General Liability policy shall provide minimum limits of \$500,000 per occurrence combined single limit that includes coverage for bodily and personal injury and property damage liability for premises, operations, products and completed operations*, independent contractors, contractual liability covering the agreement, contract or lease, broad form property damage coverages, and property damage resulting from explosion, collapse or underground exposures (x,c,u).

* For remodeling and construction projects, the CONTRACTOR shall purchase and maintain products and completed operations coverage for a minimum of three (3) years beyond the CITY'S acceptance of the project.

E. Business Automobile Liability

The CONTRACTOR shall purchase and maintain Business Automobile Liability coverage on forms no more restrictive than the latest editions of the Business Automobile Liability policies of the Insurance Services Office (ISO). The Business Automobile Liability policy shall provide minimum limits of \$500,000 per occurrence combined single limit that includes coverage for claims for bodily injury and property damage arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned and hired vehicles, and employee non-ownership use.

F. Workers' Compensation

The CONTRACTOR shall purchase and maintain Workers' Compensation insurance for all workers' compensation obligations imposed by state law and with employers liability limits of at least \$100,000 each accident and \$100,000 each employee with \$500,000 policy limit for disease.

CONTRACTORS exempt from maintaining Workers' Compensation insurance must provide a valid certificate of exemption issued by the State of Florida.

G. Endorsements and Additional Insurance

If checked below, the CITY requires the following endorsements or additional insurance:

Commercial General Liability Coverage Project Aggregate

Because the Commercial General Liability form of coverage includes an annual aggregate limitation on the amount of insurance provided, a separate project aggregate limit of \$_____ is required by the CITY for this agreement or contract.

Builders Risk Coverage

Builders Risk insurance is to be purchased for construction projects and provides insurance coverage for property from all risks of loss, subject to a waiver of coinsurance, and covering off-site storage, transit and installation risks. The amount of the coverage shall be adequate to provide full replacement value of the property, repairs, additions or equipment being installed, otherwise being handled or stored on or off premises.

The Builders Risk insurance is to be endorsed to cover the interests of all parties, including the CITY and all contractors and subcontractors.

— **Installation Floater Coverage**

Installation Floater coverage is to be purchased when Builders Risk insurance is inappropriate, or when Builders' Risk insurance will not respond, to cover damage or destruction to renovations, repairs or equipment being installed or otherwise being handled or stored by the CONTRACTOR, including off-site storage, transit and installation. The amount of the coverage shall be adequate to provide full replacement value of the property, repairs, additions or equipment being installed, otherwise being handled or stored on or off premises.

— **Motor Truck Cargo Coverage**

If the Installation Floater insurance does not provide transportation coverage, separate Motor Truck Cargo or Transportation insurance is to be provided for materials or equipment transported in the CONTRACTOR'S or other vehicles from place of receipt to building sites or other sites. The amount of coverage shall be adequate to provide full replacement value of the property being transported.

— **Contractor's Equipment Coverage**

Contractor's Equipment insurance is to be purchased to cover loss of equipment and machinery utilized in the performance of work by the CONTRACTOR.

— **Fidelity/Dishonesty Coverage – for CONTRACTOR**

Fidelity/Dishonesty insurance is to be purchased to cover dishonest acts of the CONTRACTOR'S employees, including but not limited to theft of vehicles, materials, supplies, equipment, tools, etc., especially property necessary to work performed.

— **Fidelity/Dishonesty/Liability Coverage – for City**

Fidelity/Dishonesty/Liability insurance is to be purchased or extended to cover dishonest acts of the CONTRACTOR'S employees resulting in loss to the CITY.

— **United States Longshoremen and Harborworkers Act Coverage**

The Workers' Compensation policy is to be endorsed to include United States Longshoremen and Harborworkers Act Coverage for exposures that may arise out of this agreement, contract or lease.

— **Jones Act Coverage**

The Workers' Compensation policy is to be endorsed to include Jones Act Coverage for exposures that may arise out of this agreement, contract or lease.

— **Watercraft Liability Coverage**

The Contractor shall purchase and maintain Watercraft Liability insurance with minimum limits of \$1,000,000 per occurrence combined single limit that covers bodily injury and property damage arising out of the ownership, maintenance or use of watercraft, including owned, non-owned and hired watercraft. Coverage

may be provided in the form of an endorsement to the Comprehensive General Liability policy covering Watercraft liability or Protection and Indemnity liability.

— **Aircraft Liability Coverage**

The CONTRACTOR shall purchase and maintain Aircraft Liability insurance with minimum limits of \$1,000,000 per occurrence combined single limit that covers bodily injury and property damage arising out of the ownership, maintenance or use of aircraft, including owned, non-owned and hired aircraft.

— **Professional Liability/Malpractice/Errors or Omissions Insurance**

The CONTRACTOR shall purchase and maintain Professional Liability or Malpractice or Errors or Omissions insurance with minimum limits of \$_____ per occurrence combined single limit.

If a claims-made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims-made coverage, unless the prior policy was extended indefinitely to cover prior acts.

Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of as great a duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of the claims-made coverage.

— **Pollution/Environmental Impairment Liability Coverage**

The CONTRACTOR shall purchase and maintain Pollution/Environmental Impairment insurance to cover pollution or environmental impairment that may arise from this agreement, contract or lease. In the event that the CONTRACTOR is applying herbicides and/or pesticides, the CONTRACTOR shall purchase and maintain Herbicide and Pesticide Applicator's coverage with minimum limits of \$1,000,000 per occurrence combined single limit.

— **Property Coverage For Leases**

The CONTRACTOR shall purchase and maintain for the duration of the lease, all risk and special perils, including sinkhole property insurance or equivalent to cover loss resulting from damage to or destruction of the building and personal property/contents. The policy shall cover full replacement costs, and shall include an agreed value endorsement to waive coinsurance.

Coverage shall also include continued full payment of rents to the CITY for up to one (1) year after the damage or destruction of the property.

— **Liquor Liability**

The CONTRACTOR shall provide and maintain evidence of coverage for Host Liquor Law Liability with a minimum limit of \$1,000,000 per occurrence combined single limit. If the Comprehensive General Liability policy covers

liquor, the CONTRACTOR'S agent or insurer shall provide written documentation in order to validate this coverage applies to this agreement, contract or lease. Coverage may be provided in the form of an endorsement to the Comprehensive General Liability policy covering Host Liquor Law Liability.